

PART 9

CONTRACTOR QUALIFICATIONS

9.104-1 General standards.

FAR as of FAC 90-25

To be determined responsible, a prospective contractor must—

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(c) Have a satisfactory performance record (see 9.104-3(c));

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FAR as revised

To be determined responsible, a prospective contractor must—

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(c) Have a satisfactory performance record (see 9.104-3(c) **and Subpart 42.15**). **A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2; [FAC 90-26]**

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9.104-3 Application of standards.

FAR as of FAC 90-25

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(c) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, Subcontracting with ~~Small Business and Small Disadvantaged Business Concerns~~, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

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FAR as revised

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(c) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, Subcontracting with **Small, Small Disadvantaged Business and Women-Owned Small Business Concerns**, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts. [FAC 90-32]

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9.105-1 Obtaining information.

FAR as of FAC 90-25

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(c) The contracting officer should use the following sources of information to support determinations of responsibility or nonresponsibility:

(1) The ~~list entitled~~ Parties Excluded from Procurement Programs (~~list of contractors debarred, suspended, proposed for debarment, and declared ineligible~~) maintained in accordance with Subpart 9.4.

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FAR as revised

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(c) **In making the determination of responsibility (see 9.104-1(c)), the contracting officer shall consider relevant past performance information (see Subpart 42.15). In addition,** the contracting officer should use the following sources of information to support such determinations:

[FAC 90-26]

(1) The **List of Parties Excluded from Federal Procurement and Nonprocurement** Programs maintained in accordance with Subpart 9.4.

[FAC 90-28]

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9.106-1 Conditions for preaward surveys.

FAR as of FAC 90-25

(a) A preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility. However, if the contemplated contract ~~(1) will be for \$25,000 or less or (2) will have a fixed price of less than \$100,000 and will involve commercial products (see 44.001) only,~~ the contracting officer should *not* request a preaward survey unless circumstances justify its cost.

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FAR as revised

(a) A preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility. However, if the contemplated contract **will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see Part 12),** the contracting officer should not request a preaward survey unless circumstances justify its cost. [FAC 90-32]

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9.206-3 Competition.

FAR as of FAC 90-25

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(b) *Postsolicitation.* The contracting officer shall submit to the agency activity which established the qualification requirement the names and addresses of concerns which ~~requested copies of the solicitation~~ but are not included on the applicable QPL, QML, or QBL or identified as meeting the qualification requirement. The activity will then assist interested concerns in meeting the standards specified for qualification (see 9.202(a)(2) and (4)).

FAR as revised

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(b) *Postsolicitation.* The contracting officer shall submit to the agency activity which established the qualification requirement the names and addresses of concerns which **expressed interest in the acquisition** but are not included on the applicable QPL, QML, or QBL or identified as meeting the qualification requirement. The activity will then assist interested concerns in meeting the standards specified for qualification (see 9.202(a)(2) and (4)). [FAC 90-28]

9.306 Solicitation requirements.

FAR as of FAC 90-25

Solicitations containing a testing and approval requirement shall—

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(f) Contain a delivery schedule for the production quantity ~~(see 12.104)~~. The delivery schedule may—

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FAR as revised

Solicitations containing a testing and approval requirement shall—

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(f) Contain a delivery schedule for the production quantity **(see 11.404)**. The delivery schedule may— [FAC 90-32]

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9.401 Applicability.

FAR as of FAC 90-25

~~This subpart does not apply to the exclusion of participants or principals from Federal financial or nonfinancial assistance programs and benefits pursuant to Executive Order 12549. Such exclusions are contained within the list entitled Parties Excluded from Nonprocurement Programs of the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.~~

FAR as revised

In accordance with Public Law 103-355, Section 2455 (31 U.S.C. 6101, note), and Executive Order 12689, any debarment, suspension or other Government-wide exclusion initiated under the Nonprocurement Common Rule implementing Executive Order 12549 on or after August 25, 1995, shall be recognized by and effective for Executive Branch agencies as a debarment or suspension under this subpart. Similarly, any debarment, suspension, proposed debarment or other Government-wide exclusion initiated on or after August 25, 1995, under this subpart shall also be recognized by and effective for those agencies and participants as an exclusion under the Nonprocurement Common Rule. [FAC 90-28]

9.403 Definitions.

FAR as of FAC 90-25

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~~“Parties Excluded from Procurement Programs,” formerly referred to as the Consolidated List of Debarred, Suspended, and Ineligible Contractors, means a list compiled, maintained, and distributed by the General Services Administration, in accordance with 9.404, containing the names of contractors debarred, suspended, or proposed for debarment by agencies under the procedures of this~~

FAR as revised

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List of Parties Excluded from Federal Procurement and Nonprocurement Programs means a list compiled, maintained and distributed by the General Services Administration (GSA) containing the names **and other information about parties** debarred, suspended, **or voluntarily excluded under the Nonprocurement Common Rule or the Federal**

subpart, as well as contractors declared ineligible under other statutory or regulatory authority other than Executive Order 12549. The list of Parties Excluded from Procurement Programs is contained within the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible. [FAC 90-28]

Nonprocurement Common Rule means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements. [FAC 90-28]
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9.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

| <i>FAR as of FAC 90-25</i> | <i>FAR as revised</i> |
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| (a) The General Services Administration (GSA) shall— | (a) The General Services Administration (GSA) shall— |
| (1) Compile and maintain a current, consolidated list of all contractors debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office; | (1) Compile and maintain a current list of all parties debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office; [FAC 90-28] * * * * * |
| * * * * * | (b) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs shall indicate— [FAC 90-28] |
| (b) The list entitled Parties Excluded from Procurement Programs shall indicate— | |
| * * * * * | |

Other sections where the name of the list was changed:

9.207(a)(9); 9.404; 9.405; 9.405-2; 22.1025; 28.203-7; 44.202-2; 44.303; 52.209-6

9.405-2 Restrictions on subcontracting.

FAR as of FAC 90-25

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(b) The Government suspends or debar contractors to protect the Government's interests. Contractors shall not enter into any subcontract ~~equal to or in excess of the small purchase limitation at 13,000~~ with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclusion on the ~~list of Parties Excluded from Procurement Programs~~ (see 9.404), a corporate officer or designee of the contractor is required by operation of the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. The notice must provide the following:

- (1) The name of the subcontractor;
- (2) The contractor's knowledge of the reasons for the subcontractor being on the ~~list of Parties Excluded from Procurement Programs~~;

- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the ~~list of Parties Excluded from Procurement Programs~~; and

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FAR as revised

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(b) The Government suspends or debar contractors to protect the Government's interests. **By operation of the clause at 52.209-6, Protecting the Government's Interests When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment**, contractors shall not enter into any subcontract **in excess of \$25,000** with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclusion on the **List of Parties Excluded from Federal Procurement and Nonprocurement Programs** (see 9.404), a corporate officer or designee of the contractor is required by operation of the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. The notice must provide the following: [FAC 90-28; FAC 90-29; FAC 90-32]

- (1) The name of the subcontractor;
- (2) The contractor's knowledge of the reasons for the subcontractor being on the **List of Parties Excluded from Federal Procurement and Nonprocurement Programs**; [FAC 90-28]

- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the **party's inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs**; and [FAC 90-28]

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9.409 Solicitation provision and contract clause.

| <i>FAR as of FAC 90-25</i> | <i>FAR as revised</i> |
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| (a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations where the contract value is expected to exceed \$25,000 . | (a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold . |
| (b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds \$25,000. | (b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds \$25,000. |

9.507-1 Solicitation Provisions.

| <i>FAR as of FAC 90-25</i> | <i>FAR as revised</i> |
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| (c) The contracting officer shall insert the provision at 52.209-8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract amount is expected to exceed \$25,000 . | (c) The contracting officer shall insert the provision at 52.209-8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract is expected to exceed the simplified acquisition threshold . |
| (d) The provisions required by paragraphs (b) and (c) of this subsection shall not be used in solicitations for— (1) Services excluded in section 37.204; | (d) The provisions required by paragraphs (b) and (c) of this subsection shall not be used in solicitations for— (1) Services excluded in section 37.2; |
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